



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066-5717-02]

RIN 0648-XF259

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason General category bluefin tuna quota transfer and retention limit adjustment.

SUMMARY: NMFS is transferring 40 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category January 2017 subquota period (which lasts from January 1 through March 31, 2017, or until the available subquota for this period is reached, whichever comes first). This transfer results in an adjusted subquota of 81 mt for the January 2017 subquota period and 78 mt for the Reserve category quota. NMFS also is adjusting the Atlantic tunas General category BFT daily retention limit for the January 2017 subquota period to one large medium or giant BFT from the current retention limit of three. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: The quota transfer is effective March 2, 2017 through March 31, 2017. The General category retention limit adjustment is effective March 5, 2017, through March 31, 2017.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The base quota for the General category is 466.7 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. Although it is called the “January” subquota, the regulations allow the General

category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. Based on the General category base quota of 466.7 mt, the subquotas for each time period are as follows: 24.7 mt for January; 233.3 mt for June through August; 123.7 mt for September; 60.7 mt for October through November; and 24.3 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods. Effective January 1, 2017, NMFS transferred 16.3 mt of the 24.3-mt General category quota allocated for the December 2017 period to the January 2017 period, resulting in a subquota of 41 mt for the January period and a subquota of 8 mt for the December 2017 period (81 FR 91873, December 19, 2016). Effective February 28, 2017, NMFS reallocated 138.2 mt of the 2017 Purse Seine category quota to the Reserve and transferred 45 mt from the Reserve category quota to the Longline category, resulting in an adjusted 2017 Reserve category quota of 118 mt (82 FR 12296, March 2, 2017).

Quota Transfer

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria at § 635.27(a)(8).

NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer and change in retention limit in the General category fishery. The criteria and their application are discussed below.

Transfer of 40 mt from the Reserve category to the General category

For the inseason quota transfer, NMFS considered the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)). Biological samples collected from BFT landed by General category fishermen and provided by tuna dealers provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)). As of February 27, 2017, the General category landed approximately 52 mt of its adjusted January subquota of 41 mt. Without a quota transfer, NMFS would have to close the January 2017 General category fishery, while unused quota remains in the Reserve category and while commercial-sized BFT may remain available in the areas where General category permitted vessels operate at this time of year. Transferring 40 mt of BFT quota from the Reserve category would result in 81 mt being available for the January subquota period. This quota transfer would provide additional opportunities to harvest the U.S. BFT quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT before the end

of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings in the last several years. General category landings in the winter BFT fishery tend to be highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. Any unused General category quota from the January subperiod that remains as of March 31 will roll forward to the next subperiod within the calendar year (i.e., the June-August time period). In 2016, NMFS transferred the entire 24.3-mt December subquota to the January time period, for an adjusted January 2016 subquota of 49 mt. Under a three-fish General category daily retention limit, that adjusted subquota allowed the fishery to continue through the end of March 2016. This year, fishing conditions have resulted in highly variable landings, with higher landings rates in recent days.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2017 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. In 2016, the General category exceeded its adjusted quota (discussed below) but sufficient quota was available to cover the exceedance without affecting the other categories.

NMFS will need to account for 2017 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that. This quota transfer would provide additional opportunities to harvest the U.S. BFT quota without exceeding it, while preserving the opportunity for General category

fishermen to participate in the winter BFT fishery.

This transfer would be consistent with the current quotas, which were established and analyzed in the 2015 BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments. (§ 635.27(a)(8)(v) and (vi)). Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)).

NMFS also anticipates that some underharvest of the 2016 adjusted U.S. BFT quota will be carried forward to 2017 and placed in the Reserve category, in accordance with the regulations. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, along with NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2017. NMFS also may conduct other allowable transfers among categories throughout the year after considering the regulatory determination criteria for such adjustments. In 2016, NMFS closed the General category quota effective November 4 to prevent further overharvest of the adjusted General category quota. General category landings were relatively high in the fall of 2016, due to a combination of fish availability, favorable fishing conditions, and higher daily retention limits (described below). NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General

category quota in 2017, through active inseason management such as retention limit adjustments and/or the timing of quota transfers, as practicable. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds, consider the expected increases in available 2017 quota later in the year, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

Based on the considerations above, NMFS is transferring 40 mt of BFT quota from the Reserve category, resulting in a subquota of 81 mt for the January 2017 subquota period and a subquota of 78 mt for the Reserve category. NMFS will close the General category fishery when the adjusted January period subquota of 81 mt has been reached, or it will close automatically on March 31, 2017, whichever comes first, and it will remain closed until the General category fishery reopens on June 1, 2017.

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), and listed above. NMFS has considered the relevant criteria and their applicability to the General category BFT retention limit for the remainder of the January subquota period.

As described above with regard to the quota transfer, additional opportunity to land BFT (i.e., keeping the fishery open at a lower daily retention limit) would support the collection of a broad range of data for biological studies and for stock monitoring purposes. Regarding the effects of the adjustment on bluefin tuna rebuilding and overfishing and the effects of the adjustment on accomplishing the objectives of the

fishery management plan, this action is needed to ensure that the fishery operates within the previously implemented quotas and retention limits analyzed in the Environmental Assessment for the 2011 final rule regarding General and Harpoon category management measures (76 FR 74003, November 30, 2011).

As described above, a principal consideration in reducing the daily retention limit is the objective of providing opportunities to harvest the available U.S. BFT quota without exceeding that quota, based on the goals of the 2006 Consolidated HMS FMP, as amended. The retention limit currently is three fish and would continue to be three fish if NMFS were to take no action. NMFS is setting the retention limit at one fish through this action because, given the expected level of fishing effort and catch rates, a continued level of three fish may lead to exceeding the adjusted category quota.

Regarding the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made, NMFS notes that in 2012, 2013, and 2014, the available January subquota (23.1 mt) was reached on January 22, February 15, and March 21, respectively, under a limit of two large medium or giant BFT. In each of these years, the General category did not reach its available quota by the end of the year. For 2015, the adjusted January subquota of 45.7 was not met under a daily retention limit of three large medium or giant BFT, whereas for 2016, the adjusted subquota of 49 mt was reached, and slightly exceeded, as of March 31 under a three-fish limit. For the January 2017 subquota period, NMFS allowed a three-fish limit for most of the subquota period, and is decreasing it only in the final third of the period, to try to best utilize available quota and keep the fishery open for the rest of the

subquota period, if possible.

Based on these considerations, NMFS has determined that a General category retention limit of one fish is warranted for the remainder of the January 2017 subquota period. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, help optimize the ability of the General category to harvest its available quota, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the 2006 Consolidated HMS FMP and amendments. Therefore, NMFS adjusts the General category retention limit from three to one large medium or giant BFT per vessel per day/trip, effective March 5, 2017, through March 31, 2017, or until the 81-mt January subquota is harvested, whichever comes first.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, during the remainder of the January 2017 subquota period, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the day/trip limit of one fish applies and may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. General, HMS Charter/Headboat, Harpoon, and Angling category vessel owners are required to report

the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the Android or iPhone app. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (i.e., quota and/or daily retention limit adjustment, or closure) is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access *hmspermits.noaa.gov*, for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer and daily retention limit for the remainder of the January 2017 subquota period at this time is impracticable. NMFS could not have proposed these actions earlier, as it needed to consider and respond information about landings and availability of fish and other conditions outside the agency's control that then require immediate action to be effective on the fishing grounds and thus efficiently

manage the fishery. Daily landings rates increased substantially the week of February 20, 2017, pushing total landings toward the available 41-mt quota. This information became available on February 24, 2017. NMFS could not effectively react to these landings data if, in implementing the retention limit, it allowed a public comment period, which would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria.

Delays in adjusting the retention limit may result in the available quota being exceeded and NMFS needing to close the fishery earlier than otherwise would be necessary under a lower limit. This could adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest BFT under retention limits set in response to the most recent data available. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP, as amended. Adjustment of the retention limit needs to be effective as soon as possible to extend fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.23(a)(4) and 635.27(a)(9), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: March 2, 2017.

Emily D. Menashes,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 2017-04439 Filed: 3/2/2017 4:15 pm; Publication Date: 3/7/2017]